

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

IVAN VERNORD CLEVELAND, *et al.*,
Plaintiffs,
v.
BEN CURRY, *et al.*,
Defendants.

Case No. [07-cv-02809-NJV](#)

**ORDER VACATING SEPTEMBER 20,
2013 HEARING; ORDER DENYING
WITHOUT PREJUDICE MOTION TO
DISMISS**

Re: Dkt. No. 147

Defendants move to dismiss plaintiff Ivan Cleveland's sexual assault claim on the ground that the claim was resolved on the merits in a state *habeas corpus* proceeding and therefore are barred by *res judicata*. Doc. No. 147. The court has reviewed the parties' filings and determines the matter is appropriate for decision without oral argument. Pursuant to N.D. Civ. L.R. 7-1(b), the court accordingly vacates the hearing scheduled for September 20, 2013.

This case was filed in 2007, and a jury trial is scheduled for November 4, 2013. At this juncture, the court finds it appropriate to allow Cleveland to present his evidence at trial. If necessary, Defendants may renew this as a motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50.

The court denies the motion to dismiss without prejudice.

IT IS SO ORDERED.

Dated: September 5, 2013


NANDOR J. VADAS
United States Magistrate Judge